

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK REESE, FRANCES ELAINE
PIDDE, JAMES CICHANOFSKY,
ROGER MILLER, and GEORGE
NOWLIN,

Plaintiffs,

v.

CNH GLOBAL N.V. and CNH
AMERICA LLC,

Defendants.

Case 2:04-cv-70592-PJD-PJK

Hon. Patrick J. Duggan, U.S.D.J.

Hon. Paul J. Komives, U.S. Mag. J.

**CNH’S CONTINGENT MOTION TO COMPEL RESPONSES
BY PLAINTIFFS’ EXPERTS TO DOCUMENT SUBPOENAS**

CNH Global N.V. and CNH America LLC (“CNH”) move conditionally to compel Plaintiffs’ expert witnesses to produce documents related to their current employers. The documents CNH subpoenaed from Plaintiffs’ experts are substantially the same as those Plaintiffs subpoenaed from CNH’s expert, Scott Macey. CNH objected to the request, and Plaintiffs moved to compel. (R. 373, Pls.’ Mot. Compel 10.) As explained in the opposition to Plaintiffs’ motion to compel (R. 383, CNH’s Opp’n Mot. Compel 7–9), Plaintiffs’ request to Mr. Macey is improper and Mr. Macey should not be compelled to respond. If the Court agrees with CNH, then CNH will withdraw this motion. If, however, the Court grants

motion to compel, the Court must, in fairness under the “goose-gander” rule of reciprocity grant the very same relief to CNH. (CNH hereby withdraws its request for records of former employers.)

During the deposition of one of Plaintiffs’ experts, CNH asked if the requested documents would be produced and was informed that they would not. (Ex. 1, Daniels Dep. 7:21–9:15.) CNH also asked if Plaintiffs would withdraw their request to Mr. Macey and was told that they would not. (*Id.* at 8:17–21.) This discharges CNH’s meet-and-confer obligation under the rules. *See* Fed. R. Civ. P. 37(a)(1); E.D. Mich. R. Civ. P. 7.1(a).

Dated: January 15, 2014

Respectfully submitted,

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**CNH'S BRIEF IN SUPPORT OF ITS
CONTINGENT MOTION TO COMPEL RESPONSES BY
PLAINTIFFS' EXPERTS TO DOCUMENT SUBPOENAS**

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CONCISE STATEMENT OF THE ISSUE PRESENTED

In the unlikely event that CNH's expert is ordered to produce his employer's documents, should Plaintiffs' experts be ordered to make similar productions?

**CONTROLLING OR
MOST APPROPRIATE AUTHORITY FOR THE RELIEF SOUGHT**

Federal Rule of Civil Procedure 37

Federal Rule of Civil Procedure 45

In the course of expert discovery, Plaintiffs asked one of CNH's experts, Scott Macey, for documents that relate not to his work for CNH in this case but to the mission of his current employer. CNH has briefed elsewhere the impropriety of Plaintiffs' request (R. 383, CNH's Opp'n Mot. Compel 7–9; R. 386, CNH's Opp'n Pls.' Supp'l Br. 4–7), and reiterates that the Court should not enforce such document requests, whether issued by Plaintiffs or CNH.

In an abundance of caution, however, CNH issued subpoenas to Plaintiffs' experts seeking the same documents that Plaintiffs demanded of Mr. Macey. (Exs. 2–4, CNH's Subps. Pls.' Exps.) On behalf of their experts, Plaintiffs have objected for substantially the same reasons that Mr. Macey objected: documents related to experts' employers have nothing to do with the expert's work for a litigant. (Exs. 5–7, Pls.' Exps. Objs. Subps.)* On the basis of their pending motion to compel, Plaintiffs have sought yet another extension of the schedule, and only recently agreed to go forward with Mr. Macey's deposition on January 15 (while claiming a right to bring him back if the Court grants their motion to compel).

Plaintiffs cannot have it both ways. They cannot demand from Mr. Macey what their experts refuse to provide CNH. For the reasons stated in CNH's

* Mr. Macey also objected to the request on the ground that he does not possess or control the documents sought. Plaintiffs do not and cannot raise this objection.

opposition to Plaintiffs' motion to compel regarding Mr. Macey, the Court should deny that motion. (In that event, CNH would of course withdraw its subpoenas to Plaintiffs and this motion.) If, however, the Court grants Plaintiffs' motion, fairness demands that the Court order Plaintiffs' experts to comply with CNH's subpoenas. What is good for the goose is good for the gander.

Dated: January 15, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2014, I electronically filed the foregoing **CNH's Contingent Motion To Compel Responses by Plaintiffs' Experts to Document Subpoenas** with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants.

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